

2024-1097

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

GOOGLE LLC,

Plaintiff-Appellee

v.

SONOS, INC.,

Defendant-Appellant

Appeal from the United States District Court for the Northern District of California
in nos. 3:20-cv-06754-WHA & 3:21-cv-07559-WHA, Judge William H. Alsup

RESPONSE OF GOOGLE LLC TO THE MOTIONS FOR LEAVE TO FILE AMICUS BRIEFS

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Counsel for Google LLC

March 1, 2024

CERTIFICATE OF INTEREST

I certify that the information below is complete to the best of my knowledge.

Date: March 1, 2024

Signature: /s/Dan L. Bagatell

Name: Dan L. Bagatell

1. Represented Entity	2. Real Party in Interest	3. Parent Corporations and 10% Stockholders
Google LLC	none	XXVI Holdings Inc.; Alphabet Inc.

4. Other Legal Representatives

from Quinn Emanuel
Urquhart & Sullivan, LLP:

Anne-Raphaelle Aubry
Lindsay Cooper
Nima Hefazi
Jordan R. Jaffe*
James D. Judah
Marc L. Kaplan
Jocelyn Ma
Jeffrey W. Nardinelli
Lana Robins
Brittany V. Ruyak
Charles K. Verhoeven*
Jason C. Williams*
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5. Related Cases

see Notice of Related Case Information (Dkt. 4)

6. Organizational Victims and Bankruptcy Cases

none

Although Google believes the proposed amicus briefs of the Alliance of U.S. Startups & Inventors for Jobs, American Intellectual Property Law Association, and George Washington University Law School Intellectual Property & Technology Law Clinic will not assist the Court, Google does not oppose the motions for leave to file those briefs.

Because this appeal turns on an unusual set of facts, Google asked to see the proposed amicus briefs before consenting to their filing. Each amicus declined. Now having had the opportunity to review the briefs, Google believes the amici have misapprehended the issues on appeal and argued from mistaken premises as a result. Google did not contend, and the district court did not hold, that ordinary continuation practice can or should result in patents being declared unenforceable for prosecution laches. Instead, Google contended, and the district court held, that the patent claims asserted here were unenforceable because Sonos engaged in lengthy and unjustified delay in claiming the alleged invention—including improper addition of new matter in an attempt to create written-description support when it finally proposed claims covering the critical feature thirteen years into prosecution. Google also contended, and the district court also held, that Google was severely prejudiced because Google independently developed that feature, told Sonos about that feature, and incorporated that feature into commercial products several years before Sonos amended its specification and claims in an attempt to cover it.

Nevertheless, Google appreciates that this Court normally accepts amicus briefs for whatever value they provide (great or small), and that motions panels often prefer to defer complicated merits issues to the merits panel that will ultimately decide the appeal. Google therefore does not oppose the motions for leave to file and will reserve its merits-related arguments for its merits brief.

Respectfully submitted,

PERKINS COIE LLP

by /s/Dan L. Bagatell

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Nathan K. Kelley
Andrew T. Dufresne
Tara L. Kurtis

QUINN EMANUEL URQUHART & SULLIVAN, LLP

by /s/Sean S. Pak

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Melissa J. Baily
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Counsel for Google LLC

CERTIFICATE OF AUTHORITY

I certify that I have the authority of my co-counsel Sean S. Pak to file this document with his electronic signature.

Dated: March 1, 2024

/s/Dan L. Bagatell

Dan L. Bagatell

CERTIFICATE OF COMPLIANCE WITH TYPE–VOLUME LIMITATION

1. This document complies with the type–volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 293 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The document has been prepared in a proportionally spaced typeface using Microsoft® Word software and 14-point Times New Roman type.

Dated: March 1, 2024

/s/Dan L. Bagatell

Dan L. Bagatell